

-The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Transportation

BILL: CS/SB 1458

INTRODUCER: Transportation Committee and Senator Brandes

SUBJECT: Department of Highway Safety and Motor Vehicles

DATE: March 8, 2013 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Everette	Eichin	TR	Fav/CS
2.			ATD	
3.			AP	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

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|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

CS/SB 1458 makes numerous changes to the way the Department of Highway Safety and Motor Vehicles (DHSMV, department) administers many of its programs and functions. The major provisions of this bill include:

- Correcting inconsistencies and references to the International Registration Plan;
- Requiring drivers to yield the left lane to overtaking vehicles;
- Lowering the blood alcohol level threshold at which an ignition interlock device (IID) will prevent a vehicle from starting from 0.05 to 0.025 for persons convicted of DUI and required to install an IID;
- Requiring that holders of commercial learners permits adhere to the same noncriminal traffic infraction provisions as commercial driver license holders;
- Allowing the DHSMV to use a new form for buyers and sellers when transferring electronic titles as it relates to motor vehicle casual sales;
- Expanding vehicle and vessel registration identification requirements;
- Allowing the DHSMV to eliminate certificates of repossession since such documents are effectively obsolete;

- Clarifying the DHSMV's rulemaking authority to administer traffic law and substance abuse education courses (TLSAE);
- Eliminating the requirements of eligibility for serving on the Medical Advisory Board;
- Allowing county tax collectors re-examination authority of vehicle operators based on mental and physical abilities;
- Authorizing the department to implement a pilot program in Miami-Dade and Hillsborough Counties to evaluate private rebuilt motor vehicle inspection services;
- Adding definitions and requirements for secondary metal recycling and salvage of motor vehicles and mobile homes;
- Allowing driver license applicants be able to use vision exam results of out-of-state vision doctors when renewing driver license;
- Revising Commercial Driver's License and Commercial Learner's Permits to align with federal rules, and allowing penalties;
- Authorizing the DHSMV to prohibit future financial transactions when an insufficient check fee is not satisfied with the agency;
- Authorizing driver license suspension for persons under 21 years of age when found driving with blood alcohol level of .02 or higher;
- Allowing law enforcement authorities to disqualify Commercial Driver License holders found driving with unlawful blood alcohol levels and refusing to submit to breath, urine or blood test, and issue a 10-day temporary permit while determination is made;
- Allowing that persons with an IID can be granted a medical waiver for employment purposes only (EPO) license;
- Providing that same day DUI convictions be treated as separate offenses;
- Clarifying reinstatement process for habitual traffic offenders in license restoration;
- Requiring insurance companies to report new or cancelled policies within 10 days;
- Changing requirements for self-insuring motorists;
- Requiring identification requirements for vessel registration applications; and
- Allowing monies collected from vessel registration funds above administration costs to be deposited in the Marine Resources Conservation Trust Fund.

This bill substantially amends the following sections of the Florida Statutes: 207.002, 316.003, 316.083, 316.1923, 316.1937, 316.302, 316.3025, 316.545, 316.646, 317.0016, 318.14, 318.1451, 319.141, 319.225, 319.23, 319.28, 319.30, 319.323, 320.01, 320.02, 320.03, 320.05, 320.071, 320.0715, 320.18, 320.27, 320.62, 320.77, 320.771, 320.8225, 322.095, 322.125, 322.135, 322.18, 322.21, 322.212, 322.22, 322.245, 322.25, 322.2615, 322.2616, 322.64, 322.2715, 322.28, 322.331, 322.61, 324.0221, 324.031, 324.091, 324.161, 328.01, 328.48, 328.76, 713.585, and 713.78

The bill correct cross-references in the following sections of Florida Statutes: 212.08, 261.03, 316.2122, 316.2124, 316.21265, 316.3026, 316.550, 317.0003, 320.08, 320.0847, 322.271, 322.282, 324.023, 324.171, 324.191, 627.733, and 627.7415

The bill also repeals section 322.331 of the Florida Statutes:

II. Present Situation:

International Registration Plan; Definitions

The International Registration Plan (IRP) is a commercial motor vehicle (CMV) registration reciprocity agreement among the United States and provinces of Canada, providing for payment of license fees or license taxes on the basis of fleet miles operated in various jurisdictions. The IRP agreement uses the term “Apportionable vehicle” to mean any vehicle, except a recreational vehicle, a vehicle displaying restricted plates, a municipal pickup and delivery vehicle, a bus used in transportation of chartered parties, and a government-owned vehicle, which is used or intended for use in two or more states of the United States or provinces of Canada that allocate or proportionally register vehicles and which is used for the transportation of persons for hire or is designed, used, or maintained primarily for the transportation of property and:

- Is a power unit having a gross vehicle weight in excess of 26,000 pounds;
- Is a power unit having three or more axles, regardless of weight; or
- Is used in combination, when the weight of such combination exceeds 26,000 pounds gross vehicle weight.

Sections 207.002(1)(11)(12), 316.545, 320.01, 320.03, 320.071, and 320.0715, F.S., define “apportioned motor vehicle” as any motor vehicle which is required to be registered under the IRP. Throughout chapter 316, F.S., “apportionable” is referenced “apportionally” incorrectly, and since these descriptions are not interchangeable making this correction will simply clarify the inconsistency.

The DHSMV has recommended correcting the definitional inconsistency within the International Registration Plan by deleting unnecessary references and changing “apportioned” to “apportionable” as it relates to motor vehicles.

Lane Usage and Passing

Current Florida law in relation to “driving on right side of roadway” requires vehicles moving at a lesser rate of speed to drive in the right hand lane as soon as it is reasonable to proceed into that lane. Exceptions and exemptions include: when overtaking and passing another vehicle proceeding in the same direction or when preparing for a left turn at an intersection or into a private road or driveway.¹ Violations of this law are noncriminal offenses. However, enforcement of these provisions has been minimal.

Current law provides that drivers overtaking other drivers on a two-lane road must use the proper signal, and those being overtaken must yield the right of way to the overtaking vehicle. In addition, vehicles being overtaken may not increase speed until the attempted pass is complete or it is reasonably safe to do so.²

Ignition Interlock Devices (IID)

A driver is considered under the influence of alcohol when a person’s blood alcohol content (BAC) is 0.08 or more grams of alcohol per 100 milliliters of blood; or 0.08 or more grams of

¹ Section 316.081(1), (2), and (3), F.S.

² Section 316.083, F.S.

alcohol per 210 liters of breath. The department requires placement of a department-approved IID for any person convicted of committing an offense of driving under the influence as specified in s. 322.2715(3), F.S.:

- First offense – under s. 316.193, F.S.,³ and having an unlawful blood-alcohol level or breath-alcohol level as specified in s. 316.193(4),⁴ or if a person is convicted of a violation of s. 316.193, F.S., and was at the time of the offense accompanied in the vehicle by a person younger than 18, the person shall have IID installed for not less than 6 continuous months for the first offense and for not less than 2 continuous years for a second offense.
- Second offense -- the IID shall be installed for a period of not less than 1 continuous year.
- Third offense – occurs within 10 years after a prior conviction for a violation of s. 316.193, F.S., IID shall be installed for a period of not less than 2 continuous years.
- Fourth or subsequent offense – IID shall be installed for a period of not less than 5 years.

Section 316.1937, F.S., provides the device be certified by the DHSMV and installed so that the vehicle will not start if the operator's alcohol level is in excess of 0.05 percent BAC (equates to 3-4 12 oz. beers an hour for an average weight male) or what is specified by the court. Consideration may be given to persons having documented medical conditions that would prohibit the IID from functioning normally. The IID shall be placed on all vehicles that are individually or jointly leased or owned and routinely operated by the convicted person.

Enforcement of Federal Regulations

Texting and Hand-held Mobile Phones

Federal law recently imposed a prohibition against drivers of commercial motor vehicles engaging in texting while driving and provided that a motor carrier may not allow or require its drivers to engage in texting while driving.⁵ In addition, the federal law prohibits a driver of a commercial motor vehicle from using a hand-held mobile telephone while driving and prohibits a motor carrier from allowing or requiring its drivers to use a hand-held mobile phone while driving a CMV.⁶ These provisions are contained in 49 C.F.R. § 383, which is not currently referenced in Florida law incorporating federal provisions applicable to CMVs engaged in interstate or intrastate commerce.

Applicable Versions of Federal Law

Federal law requires each state to “review its laws and regulations to achieve compatibility with the Federal Motor Carrier Safety Regulations (FMCSA).”⁷ Federal guidelines require a state to:

“...adopt and enforce in a consistent manner the requirements referenced in the above guidelines in order for the FMCSA to accept the State's determination that it has compatible safety requirements affecting interstate motor carrier operations. Generally,

³ <http://www.flsenate.gov/Laws/Statutes/2012/316.193> Driving Under the Influence

⁴ Id., (See penalties)

⁵ 49 C.F.R. § 383.80 (2011)

⁶ 49 C.F.R. § 383.82 (2011)

⁷ 49 C.F.R. part 355, Appendix A, Guidelines for the Regulatory Review:
http://www.law.cornell.edu/cfr/text/49/355/appendix_A

the States would have up to 3 years from the effective date of the new Federal requirement to adopt and enforce compatible requirements.”

Section 316.302, F.S., among other items, applies specified federal regulations to all owners or drivers of CMVs engaged in intrastate commerce as such rules and regulations existed on October 1, 2011. The state will be out of compliance with federal law on October 1, 2014, unless the date is changed.

Liquefied Petroleum Gas Motor Vehicles/Cargo Tanks

Current law provides that the rules and regulations applicable to the transporting of liquefied petroleum gas on the highways, roads, or streets of this state shall be only those adopted by the Department of Agriculture and Consumer Services under ch. 527. DHSMV commercial motor vehicle enforcement officers have no express authority to inspect a commercial motor vehicle transporting liquefied petroleum gas to ensure safety of the traveling public on the roadways.

Expedited service; applications; fees

Section 317.0016, F.S., requires that the department provides, through its agents for use by the public, expedited service on title transfers, title issuances, duplicate titles, recordation of liens, and certificates of repossession. A fee of \$7 is charged for the service in addition to the fees in ss. 317.0007 and 317.0008, F.S., and \$3.50 of this fee shall be retained by the processing agency. The department shall issue all titles applied for within 5 working days after receipt of application, except for a duplicate title application, per s. 317.0008(3), in which the title must be issued within 5 working days after compliance with the department’s verification requirements. A fee of \$15 is charged for the duplicate certificate.

Noncriminal traffic infractions; exception; procedures

Section 318.14, F.S., requires that any person holding a commercial driver license and cited while driving a noncommercial motor vehicle for an infraction under this section, other than a violation of s. 316.183(2), F.S., s. 316.187, or s. 316.189, F.S., when the driver exceeds the posted limit by 30 miles per hour or more and certain other sections of statute, he or she can elect to attend a basic driver improvement course. For the driver that chooses this option, adjudication must be withheld and no points will be assessed to his or her driver license.

Driver Improvement Schools

Section 318.1451, F.S., requires the department to approve all courses of all driver improvement schools related to ss. 318.14(9), 322.0261, and 322.291, F.S. The chief judge of the applicable judicial circuit may establish requirements of location within the judicial circuit. Individuals are allowed to engage in the business of operating a driver improvement school offering department approved and regulated courses using technology as the delivery method for driver improvement schools.

The department considers course content promoting safety, crash avoidance techniques, and other criteria to improve driver performance. Initial approval of courses are based on the department’s review of all course materials, course presentation to the department by the provider and the provider’s plan for effective oversight by those who deliver the course to the State of Florida. New courses are provisionally approved and limited to the Judicial Circuit originally approved for pilot testing, until fully approved by the department, and delivered

statewide. Also in approving criteria, and use technology as a teaching form, the department considers only those courses submitted by a person, business, or entity previously approved for statewide delivery. Further, the department does not accept proof of attendance of courses of persons attending those schools that do not teach approved courses. Those persons can then choose to take the course at another school.

A \$2.50 assessment fee is collected, along with the regular course fee by the school, from each person who elects to attend a course. The fee is remitted to the department and deposited in the Highway Safety Operating Trust Fund in order to receive unique course completion certificate numbers for course participation. The assessment fee is used to administer this program and fund the general operations of the department. Administrative duties are the responsibility of the providers. It is necessary for the providers to maintain all records related to the conduct of their approved courses for 5 years, and allow the department to inspect course records as necessary. Course records may be maintained in an electronic format. Pursuant to s. 119.07(1), F.S., the department makes the records available to the public upon request.

The department or court may prepare a traffic school reference guide to list the benefits of attending a driver improvement school, which would contain names of fully approved course providers along with a telephone number.

Advanced Driver Improvement

A Florida hardship license can be obtained by enrolling in an Advanced Driver Improvement (ADI) course. When a motorist driver's license has been suspended or revoked for points or because of habitual traffic offenses (12 points on driving record in the past year) or by court order, that motorist may wish to enroll in the ADI course to obtain a Florida hardship license.⁸

Basic Driver Improvement

The Basic Driver Improvement (BDI)⁹ course is for individuals wishing to retain their driver license when found at fault and:

- someone was transported to the hospital as a result of their offense;
- had two crashes in a two-year period which resulted in property damage greater than \$500; or was ticketed for:
 - passing a stopped school bus
 - highway racing;
 - reckless driving, or
 - running a red light.

Motorists may choose to attend the BDI course in lieu of driving record points.

Traffic Law and Substance Abuse Education course

Persons having never held a regular driver license in any state, country, or jurisdiction must complete a Traffic Law and Substance Abuse Education course (TLSAE)¹⁰ before applying for a temporary driving permit (restricted driver license) in the state of Florida. The driver education

⁸ <http://www.flhsmv.gov/ddl/adicphone.html>

⁹ Id.

¹⁰ Id.

courses offered by some county school boards may substitute for this requirement. Individuals under 21 years old who receive a notice of suspension for driving with a blood alcohol level of .02 to .05 must complete a TLSAE course in order to reinstate his or her driver license on a hardship basis.

In recent years, the agency has experienced repeated complaints related to driver improvement courses. These complaints prompted the Legislative Joint Administrative Procedures Committee¹¹ to express and suggest strengthening the agency's authority by clarifying the implementation of the driver improvement courses.

Transfer and reassignment forms; odometer disclosure statements

Under s. 319.225, F.S., every certificate of title must include this statement: "Federal and state law require the completion of the odometer statement. Failure to complete or providing false information may result in fines, imprisonment, or both." This statement must be on the reverse side of all certificates of title issued by the department. Also on the reserve side of the form for transfer of title by the titleholder of record, there must be an odometer disclosure statement, required by 49 C.F.R. s. 580.5. The law has not addressed electronic title transfers in casual or private sales.

The department requested a variance from The National Highway Transportation Safety Administration (NHTSA) for acquiring and maintaining odometer reading records. The NHTSA has approved the department's request to use an alternate form to record odometer readings. The certificate of title forms has been revised numerous times to accommodate space requirements, and most recently revised to eliminate a previously required duplicate copy already being entered into the Florida Real-Time Vehicle Information System (FRVIS).¹²

Application for, and issuance of, certificate of title

Under s. 319.23, F.S., a certificate of title must be made upon a form prescribed by the department and filed with the department along with the fee. However, if there has been a certificate of title previously issued for a motor vehicle or mobile home, that certificate of title must also accompany the form, duly assigned, or reassigned. Also, if either the motor vehicle or the mobile home for which the application for a certificate of title is made and is a new motor vehicle or new mobile home for which one or more manufacturers' statements of origin are required by the provisions of s. 319.21, F.S., the application for a certificate of the title must be accompanied by all such manufacturers' statements of origin.

The title certificate or application for title must contain the applicant's full name, date of birth, sex, personal or business identification, which may include, a driver's license number, Florida identification card number, or federal employer identification number, and the license plate number or, an affidavit certifying that the motor vehicle to be titled will not be operated upon the public highways of this state.

Transfer of ownership by operation of law

¹¹ JAPC conducts continuous oversight of executive branch actions implementing legislatively delegated powers, ensuring that each action has an adequate statutory basis, that all applicable procedures are followed, and that no illegal rules are imposed on the people of Florida.

¹² On-line computer system providing access to the DHSMV's motor vehicle database.

In case of repossession of a motor vehicle or mobile home, s.319.28, (2)(b), F.S., requires an affidavit by the party to whom possession has passed stating that the vehicle or mobile home was repossessed upon default. Such affidavit is considered satisfactory proof of ownership and right of possession. At least 5 days prior to selling the repossessed vehicle, any subsequent lienholder named in the last issued certificate of title must be sent notice of the repossession by certified mail, on a form prescribed by the department. If such notice is given and no written protest to the department is presented by a subsequent lienholder within 15 days from the date on which the notice was mailed, the certificate of title or the certificate of repossession is issued showing no liens. If the former owner or any subsequent lienholder files a written protest within the 15-day period, the department may not issue the certificate of title or certificate of repossession for 10 days. If no injunction has been served on the department commanding it not to deliver the certificate of title or certificate of repossession, the department delivers the certificate of title or repossession to the applicant. Any lienholder who has repossessed a vehicle in compliance with these provisions must apply to a tax collector's office in this state or to the department for a certificate of repossession or to the department for a certificate of title under s. 319.323, F.S. Proof of the required notice to subsequent lienholders must be submitted together with regular title fees. A lienholder to whom a certificate of repossession has been issued may assign the certificate of title to the subsequent owner. Any person found guilty of violating any requirements of this paragraph shall be guilty of a felony of the third degree, punishable as provided in ss. 775.082, 775.083, or 775.084, F.S.

Certificates of Repossession

Section 319.323, F.S., The department offers separate title offices used by private citizens and licensed motor vehicle dealers to receive expedited service on title transfers, title issuances, duplicate titles, recordation of liens, and certificates of repossession. A fee of \$10 is charged for the expedited service in addition to the fees imposed by s. 319.32, F.S.

When a lienholder repossesses a motor vehicle, currently he or she has the option of requesting a certificate of title or a certificate of repossession for the vehicle. Since the title must be in the lienholder's possession to resale the vehicle it is no longer necessary to require a certificate of repossession, effectively making the certificate of repossession obsolete.

Records of the Department

Under s. 320.05, F.S., the department assigns a distinctive number upon receipt of a registration for a motor vehicle, vessel, or mobile home application. Electronic registration records are open to inspection of the public during business hours. However, the information is only provided if the person requesting it furnishes positive proof of identification. DHSMV or the county tax collector that provides the records is responsible for recording the name and address of the person other than a representative of a law enforcement agency who requests and receives information from a motor vehicle or vessel registration record and shall also record the name and address of the person who is the subject of the inquiry or other information identifying the entity about which information is requested. A record of each inquiry must be maintained for a period of 6 months from the date the information was released to the inquirer. There is no prohibition against any financial institution, insurance company, motor vehicle dealer, licensee under ch. 493, attorney, or other agency which the department determines has the right to know from obtaining, for professional or business use only, information in such records from the department

through any means of telecommunication pursuant to a code developed by the department providing all fees have been paid.

The department is authorized upon application and proper fee payment, to prepare and furnish lists containing motor vehicle, vessel, mobile home, driver license, or crash record information to search records of the department, and make copies of the records and attestations.

Withholding Registration

Sections 320.18, 320.27, 320.62, 320.77, 320.771, and 320.8225, F.S., allow the department to withhold the registration of any motor vehicle or mobile home when the owner has failed to register for any previous period for which it appears registration should have been made until the tax for such period or periods is paid. The department may cancel any vehicle or vessel registration, driver license, identification card, or fuel-use tax decal if the owner pays for any vehicle or vessel registration, driver license, identification card or fuel-use tax decal; pays any administrative, delinquency, or reinstatement fee; or pays any tax liability, penalty, or interest specified in ch. 207, F.S., by a dishonored check, or if the vehicle owner or motor carrier has failed to pay a penalty for a weight or safety violation issued by the Florida Department of Transportation (FDOT) or the DHSMV. The FDOT and DHSMV may impound any commercial motor vehicle that has a canceled license plate or fuel-use tax decal until the tax liability, penalty, and interest specified in ch. 207, F.S., the license tax, or the fuel-use decal fee, and applicable administrative fees have been paid for by certified funds.

Motor Vehicle Dealers; application and fee

Any person who buys, sells, or deals in three or more motor vehicles in any 12-month period or who offers or displays for sale three or more motor vehicles in any 12-month period is presumed to be engaged in such business. No person may engage in business as a motor vehicle dealer in this state without first obtaining a license.¹³ With the exception of transactions with motor vehicle auctions, no person other than a licensed motor vehicle dealer may advertise for sale any motor vehicle belonging to another party unless as a direct result of a bona fide legal proceeding, court order, settlement of an estate, or by operation of law. Upon making initial application, the applicant shall pay to the department a fee of \$300 in addition to any other fees now required by law. Upon making a subsequent renewal application, the applicant shall pay to the department a fee of \$75 in addition to any other fees now required by law. Each license issued to a franchise motor vehicle dealer expires annually on December 31. Each license issued to an independent or wholesale dealer or auction expires annually on April 30. Not less than 60 days prior to the license expiration date, the department delivers to each licensee the necessary renewal forms.

Medical Advisory Board

Section 322.125, F.S., provides that the Medical Advisory Board (MAB) be composed of not fewer than 12 or more than 25 members, at least one of whom must be 60 years of age or older and all but one of whose medical and other specialties must relate to driving abilities, which number must include a doctor of medicine who is employed by the DHSMV in Tallahassee, who shall serve as administrative officer for the board. The executive director of the DHSMV shall recommend persons to serve as board members. Every member but two must be a doctor of medicine licensed to practice medicine in this or any other state and must be a member in good

¹³ <http://www.flsenate.gov/Laws/Statutes/2012/320.27>

standing of the Florida Medical Association or the Florida Osteopathic Association. One member must be an optometrist licensed to practice optometry in this state and must be a member in good standing of the Florida Optometric Association. One member must be a chiropractic physician licensed to practice chiropractic medicine in this state. Members must be approved by the Cabinet and serve 4-year staggered terms. The board membership must, to the maximum extent possible, consist of equal representation of the disciplines of the medical community treating the mental or physical disabilities that could affect the safe operation of motor vehicles.

Driver license agents

Under s. 322.135, F.S., the department authorizes tax collectors who are constitutional officers under s. 1(d), Art. VIII of the State Constitution¹⁴ to serve as its agent for the provision of specified driver license services. A tax collector may refuse to issue or renew a driver license if he or she has reason to believe that the licensee or prospective licensee is physically or mentally unqualified to operate a motor vehicle. The tax collector may direct such licensee to the department for examination or reexamination under s. 322.221, F.S.¹⁵

Driver licenses and renewals

The department may issue an original driver's license only after the applicant successfully passes the required examinations and presents the application to the department. Also, the department may waive the driver license exam requirement if the applicant is otherwise qualified and surrenders a valid license issued by another state, a province of Canada, or the U.S. Armed Forces which is of an equal or lesser classification. A licensee who is otherwise eligible for renewal and who is at least 80 years of age: must submit to a vision test administered by a physician licensed under chs. 458 and 459, an optometrist licensed under ch. 463, or a licensed physician at a federally established veterans' hospital; and send results of the test to the department on a form obtained from the department and signed by the health care practitioner; and must meet vision standards that are equivalent to the standards for passing the departmental vision test. The physician or optometrist may submit the results of a vision test by a department-approved electronic means.

Unauthorized possession of a Commercial Driver License

Section 322.212, F.S., allows that in addition to any other penalties provided in s. 322.212, F.S., any person providing false information when applying for a commercial driver license will be disqualified from operating a commercial motor vehicle for a period of 60 days.

Suspension of license upon notification of a court

Under chs. 316 and 320, the department is authorized to suspend the driver license of persons who have failed to:

- comply with directives ordered by traffic court;
- to pay child support in non-IV-D cases as provided in ch. 61; or
- to pay any financial obligation in any other criminal case.

¹⁴ <http://www.flsenate.gov/Laws/Constitution#A8> , County Officers

¹⁵ <http://www.flsenate.gov/Laws/Statutes/2012/322.221> (See reexamination law)

If the person fails to comply with the directives of the court within the 30-day period, or, in non-IV-D cases, fails to comply within the period specified in that statute, the depository or the clerk of the court notifies the department of such failure within 10 days.

Currently, notification to the department is done electronically for these types of suspensions. However, not all clerks of court choose this form of contact.

Court reporting convictions; temporary reinstatement of driving privileges

Under s. 322.25(7), F.S., a driver convicted of DUI, whose license and driving privilege have been revoked, may be issued a court order for reinstatement of a driving privilege on a temporary basis; provided that, as a part of the penalty, upon conviction, the defendant is required to enroll in and complete a driver improvement course for the rehabilitation of drinking drivers and the driver is otherwise eligible for reinstatement of the driving privilege. The period of time for which a temporary permit issued in accordance with this subsection is valid shall be deemed to be part of the period of revocation imposed by the court.

According to DHSMV, no court has ordered a temporary reinstatement under these provisions since 1982.

Suspension of Driver License; right to review

Under s. 322.2615, F.S., when the department determines that a person had a blood-alcohol level or breath-alcohol level of 0.08 or higher, the department shall suspend the person's driver's license. Subsection (1)(b) allows the driver to request a formal or informal review of the suspension by the department within 10 days after the date of issuance of the notice of suspension. If the person whose license was suspended requests a formal review, the department must schedule a hearing within 30 days after the request is received by the department and must notify the person of the date, time, and place of the hearing. The formal review hearing is held before a hearing officer employed by the department, and the is authorized to administer oaths, examine witnesses and take testimony, receive relevant evidence, issue subpoenas for the officers and witnesses identified in documents, regulate the course and conduct of the hearing, question witnesses, and make a ruling on the suspension. The party requesting the presence of a witness is responsible for the payment to the witness and for notifying in writing the state attorney's office in the appropriate circuit of the issuance of the subpoena.

According to DHSMV, telephonic appearance at such hearings are not addressed by statute and may become problematic in appellate litigation, increasing legal costs for the department and creating ongoing uncertainty for hearing officers and the courts. Invalidation for failure of a witness to appear is a frequently-litigated issue.

Multiple offenses with one conviction

In a prosecution for a violation of DUI, (s. 316.193, F.S., or former s. 316.1931, F.S.), the following provisions apply:

- Upon conviction of the driver, the court, along with imposing sentence, shall revoke the driver's license or driving privilege of the person so convicted, effective on the date of conviction, and shall prescribe the period of such revocation in accordance with the following provisions:

- First conviction for a violation, except a violation resulting in death, the driver's license or driving privilege shall be revoked for not less than 180 days or more than 1 year.
- Second conviction for an offense that occurs within a period of 5 years after the date of a prior conviction for a violation of the provisions of the driver's license or driving privilege shall be revoked for not less than 5 years.
- Third conviction for an offense that occurs within a period of 10 years after the date of a prior conviction for the violation of the provisions of the driver's license or driving privilege shall be revoked for not less than 10 years.

Currently, Section 322.28(2)(a), F.S., does not address situations where a driver commits 2 DUI offenses on the same day or second and third convictions occurring outside of a 5 or 10 year period, after the date of the prior conviction. The department states that it has been made aware of situations in which a driver receives two DUI citations for separate events but is convicted of both offenses at one court proceeding. Also, reference language in that same section for first time DUI convictions is no longer applicable.

Disqualifications operating commercial motor vehicle

Under s. 322.61, F.S., a holder of a commercial driver license (CDL) who is convicted of multiple specified serious traffic violations in a CMV in separate incidents within a 3-year period, may be disqualified from operating a CMV for periods ranging from 60 days to one year depending on the number and type of violations.

Commercial *learner* permit holders have not been subject to the same penalties as commercial driver license holders even though both operate on the same roadways. The department has recommended aligning the penalties to fully conform to the required federal criteria for CMVs.

Insurers reports to DHSMV; suspension of driver license and vehicle registration;

Section 324.0221, requires each insurer that has issued a policy providing personal injury protection (PIP) coverage or property damage liability coverage shall report the renewal, cancellation, or nonrenewal to the department within 45 days after the effective date of each renewal, cancellation, or nonrenewal. Upon the issuance of a policy providing PIP coverage or property damage liability coverage to a named insured not previously insured by the insurer during that calendar year, the insurer must report the issuance of the new policy to the department within 30 days. The department may adopt rules regarding the form and documentation required. Failure by an insurer to file proper reports with the department constitutes a violation of the Florida Insurance Code.¹⁶ These records shall be used by the department only for enforcement and regulatory purposes, including the generation by the department of data regarding compliance by owners of motor vehicles with the requirements for financial responsibility coverage.

According to the department, it is necessary to change the timeline for customers and insurers to report proof of insurance to reduce a window of time allowing for vehicles to be on the roadways uninsured.

Proving financial responsibility

¹⁶ <http://law.onecle.com/florida/insurance/chapter624.html> (See definitions and complete statute, including US Code.)

Section 324.031, F.S., provides that an owner or operator of a taxicab, limousine, jitney, or any other for-hire passenger transportation vehicle may prove financial responsibility by providing satisfactory evidence of holding a motor vehicle liability policy as defined in ss. 324.021(8) or 324.151, F.S., when such policy is issued by an insurance carrier which is a member of the Florida Insurance Guaranty Association. The operator or owner of any other vehicle may also prove his or her financial responsibility by:

- Furnishing satisfactory evidence of holding a motor vehicle liability policy as defined in ss. 324.021(8)17 and 324.151, F.S.;18
- Posting with the department a satisfactory bond of a surety company authorized to do business in this state, conditioned for payment of the amount specified in s. 324.021(7), F.S.;
- Furnishing a certificate of the department showing a deposit of cash or securities in accordance with s. 324.161, F.S.;19 or
- Furnishing a certificate of self-insurance issued by the department in accordance with s. 324.171, F.S.20

Any person, including any firm, partnership, association, corporation, or other person, other than a natural person, electing to use the method of proof specified in subsection (2) or subsection (3) shall post a bond or deposit equal to the number of vehicles owned times \$30,000, to a maximum of \$120,000; in addition, any such person, other than a natural person, shall maintain insurance providing coverage in excess of limits of \$10,000/20,000/10,000 or \$30,000 combined single limits, and such excess insurance shall provide minimum limits of \$125,000/250,000/50,000 or \$300,000 combined single limits. These increased limits shall not affect the requirements for proving financial responsibility under s. 324.032(1), F.S.²¹

Notice to department; notice to insurer

Section 324.091, F.S., requires each owner and operator involved in a crash or conviction case within the purview of this chapter shall furnish evidence of automobile liability insurance, motor vehicle liability insurance, or a surety bond within 14 days after the date of the mailing of notice of crash by the department in the form and manner as it may designate. Upon receipt of evidence that an automobile liability policy, motor vehicle liability policy, or surety bond was in effect at the time of the crash or conviction case, the department shall forward by United States mail, postage prepaid, to the insurer or surety insurer a copy of such information and shall assume that the policy or bond was in effect, unless the insurer or surety insurer notifies the department otherwise within 20 days after the mailing of the notice to the insurer or surety insurer. Proof of mailing to the insurer or surety insurer may be made by the department by naming the insurer or surety insurer to whom the mailing was made and by specifying the time, place, and manner of mailing. The department has recommended requiring verification of insurance proof electronically rather than via mail.

¹⁷ <http://flsenate.gov/Laws/Statutes/2012/324.021>

¹⁸ <http://flsenate.gov/Laws/Statutes/2012/324.151>

¹⁹ <http://flsenate.gov/Laws/Statutes/2012/324.161>

²⁰ <http://flsenate.gov/Laws/Statutes/2012/324.171>

²¹ <http://flsenate.gov/Laws/Statutes/2012/324.032>

Proof of financial responsibility; surety bond or deposit

Section 324.161, F.S., authorizes that the certificate of the department of a deposit may be obtained by depositing with it \$30,000 cash or securities such as may be legally purchased by savings banks or for trust funds, of a market value of \$30,000 and which deposit shall be held by the department to satisfy, any execution on a judgment issued against such person making the deposit, for damages because of bodily injury to or death of any person or for damages because of injury to or destruction of property resulting from the use or operation of any motor vehicle occurring after such deposit was made. Money or securities so deposited shall not be subject to attachment or execution unless such attachment or execution shall arise out of a suit for damages.

Application for certificate of title

Section 328.01, F.S., requires that the owner of a vessel which is required to be titled shall apply to the county tax collector for a certificate of title. The application shall include the true name of the owner, the residence or business address of the owner, and the complete description of the vessel, including the hull identification number, except that an application for a certificate of title for a homemade vessel shall state all the foregoing information except the hull identification number. The application shall be signed by the owner and shall be accompanied by personal or business identification, which may include, but need not be limited to, a driver's license number, Florida identification card number, or federal employer identification number, and the prescribed fee. The department has recommended such application require the inclusion of an official identification credential.

Vessel registration, application, certificate, number, decal, duplicate certificate

Section 328.48, F.S., provides that the owner of each vessel required by this law to pay a registration fee and secure an identification number shall file an application with the county tax collector. The application shall provide the owner's name and address; residency status; personal or business identification, which may include, but need not be limited to, a driver's license number, Florida identification card number, or federal employer identification number; and a complete description of the vessel, and shall be accompanied by payment of the applicable fee required in s.328.72, F.S. Registration is not required for any vessel that is not used on the waters of this state. The department has recommended such application require the inclusion of an official identification credential.

Marine Resources Conservation Trust Fund

Section 328.76(1), F.S., directs a specified, \$1.4 million transfer of revenue received from vessel registration fees to the Highway Safety Operating Trust Fund to cover the department's administrative expenses of vessel registration. The remainder is deposited in the Marine Resources Conservation Trust Fund for recreational channel marking; public launching facilities; law enforcement and quality control programs; aquatic weed control; manatee protection, recovery, rescue, rehabilitation, and release; and marine mammal protection and recovery.

According to the department, due to reorganization and efficiencies, the department's administrative costs for the Vessel Registration Program have been significantly reduced in recent years. The department recommends revisions effecting a transfer equal to its administrative expenses.

Dismantling and Salvage of Vehicles or Mobile Homes

When a motor vehicle or mobile home is to be dismantled, destroyed, or altered so significantly as to no longer be the motor vehicle or mobile home described in the certificate of title, subsection (2) of s. 319.30, F.S., requires the owner(s) as listed on the title to surrender the title to the Florida Department of Highway Safety and Motor Vehicles (DHSMV) for cancellation. Violation of the requirement constitutes a second-degree misdemeanor.²²

All vehicles being sold, transported, or delivered to a salvage motor vehicle dealer²³ must be accompanied by:

- a properly endorsed certificate of title,²⁴
- a valid salvage certificate of title issued by the DHSMV in the name of the seller or properly endorsed to the seller, or
- a valid certificate of destruction issued in the name of the seller or properly endorsed to the seller.

Certificate of Title

In Florida, most vehicles are required to be titled;²⁵ the exceptions are mopeds, motorized bicycles, and trailers weighing less than 2,000 pounds. A certificate of title is the record that is evidence of ownership of a motor vehicle issued by DHSMV.²⁶

Salvage Certificate of Title and Certificate of Destruction

When an uninsured vehicle or mobile home is wrecked or damaged and the cost to repair it is 80 percent or more of its value it is considered a total loss. When an insurance company has paid to replace a wrecked or stolen vehicle or mobile home, it is declared a total loss. Whether insured or not, a vehicle or mobile home considered a total loss is declared “salvage.” Within 72 hours, the owner or insurance company must forward the certificate of title to DHSMV for processing, applying for either a Certificate of Title or Certificate of Destruction.²⁷ The owner or insurance company may not dispose of a vehicle or mobile home declared a total loss before obtaining a salvage certificate of title or certificate of destruction.²⁸

When a towing company tows and stores a vehicle, the company may apply for a certificate of destruction under certain conditions.²⁹ Under s. 713.78(2), F.S., when a wrecker operator tows and stores a vehicle or vessel, the wrecker operator must send notice to the registered owner, the insurance company insuring the vehicle, and all lienholders, as disclosed by state agency records.³⁰ Vehicles or vessels remaining unclaimed may be sold by public auction by the wrecker

²² As punishable by s. 775.082 or s. 775.083, F.S., up to 60 days in jail and/or up to a \$500 fine.

²³ By reference, s. 319.30, F.S., defines a salvage motor vehicle dealer as “any person who engages in the business of acquiring salvaged or wrecked motor vehicles for the purpose of reselling them and their parts.”

²⁴ A certificate of title is properly endorsed when the identified owner(s), i.e., the seller, has completed the form printed on the back of the certificate containing the name and address of the purchaser, odometer information, selling price, and the date sold in the “Transfer of Title by Seller” section. The seller must also sign and hand print their name.

²⁵ Section 320.02, F.S., generally.

²⁶ Sections 319.001(1) and 319.30(1)(c), F.S.

²⁷ An insurance company must forward the certificate of title within 72 hours from the time it obtains it from the owner.

²⁸ Section 319.30(3)(b), F.S.

²⁹ Section 713.78(11), F.S.

³⁰ Section 713.78(4)(a), F.S.

operator for towing and storage charges.³¹ If the vehicle to be sold is to be dismantled, destroyed, or altered significantly, a wrecker operator must apply to the county tax collector for a certificate of destruction.³² The application for a certificate of destruction must include an affidavit from the applicant that it has complied with all applicable requirements of s. 713.78, F.S., and, if the vehicle or vessel is not registered in Florida, by a statement from a law enforcement officer that the vehicle or vessel is not reported stolen. The application must also be accompanied by any such documentation as may be required by DHSMV.

A certificate of destruction, which authorizes the dismantling or destruction of the vehicle or vessel described therein, may be reassigned no more than twice before dismantling or destruction of the vehicle shall be required. The certificate of destruction must accompany the vehicle or vessel for which it is issued, when such vehicle or vessel is sold for such purposes, in lieu of a certificate of title. Violation of these provisions, including providing a false or fictitious name, address, or statement on an application or affidavit, is a third degree felony punishable as provided in s. 775.082, s. 775.083, or s. 775.084, F.S.

Derelict Motor Vehicle Certificates

Under s. 319.30, F.S., a derelict motor vehicle is any motor vehicle or mobile home, with or without all its parts, which is:

- valued under \$1,000;
- at least 10 years old; and
- is in such condition that its primary value is for dismantling for parts or conversion to scrap metal.

When a derelict motor vehicle is sold, transported, or delivered to a salvage motor vehicle dealer, the purchaser must record the date, and the name, address, and personal identification card number of the person selling the vehicle, accompanied by:³³

- the properly endorsed certificate of title,
- a valid salvage certificate of title issued by the DHSMV in the name of the seller or properly endorsed to the seller, or
- a valid certificate of destruction issued in the name of the seller or properly endorsed to the seller.

If none of these documents are available, a derelict motor vehicle certificate must be completed by the owner, the owner's authorized transporter, and the licensed salvage motor vehicle dealer, at the time of sale, transport, and delivery to the dealer or recycler. The dealer or recycler must notify DHSMV within 24 hours of receiving the derelict vehicle or mobile home and the derelict vehicle or mobile home must be secured for three business days (excluding weekends and holidays) prior to its destruction or dismantling. Under s. 319.30(2)(c), F.S., it is a third degree felony³⁴ for anyone to willfully and deliberately:

³¹ Section 713.78(6), F.S.

³² Section 713.78(11), F.S.

³³ Section 319.30(2)(c), F.S.

³⁴ As punishable by s. 775.082, s. 775.083, or s. 775.084, F.S., up to 5 years in prison and/or a \$5,000 fine.

- sell, transport, deliver, purchase, or receive a derelict motor vehicle without obtaining:
 - a certificate of title,
 - a salvage certificate of title,
 - a certificate of destruction, or
 - a derelict motor vehicle certificate;
- enter false or fictitious information on a derelict motor vehicle certificate;
- not complete the derelict motor vehicle certificate or not notify DHSMV; or
- destroy or dismantle a derelict motor vehicle without waiting the required three full days.

When a derelict motor vehicle is sold, transported, or delivered to a secondary metals recycler,³⁵ the purchaser must record the date, and the name, address, and personal identification card number of the person selling the vehicle, accompanied by:³⁶

- the properly endorsed certificate of title,
- a valid certificate of destruction issued in the name of the seller or properly endorsed to the seller, or
- a valid derelict motor vehicle certificate.

If none of these documents are available, a derelict motor vehicle certificate must be completed by the owner, the owner's authorized transporter, and the licensed salvage motor vehicle dealer, at the time of sale, transport, and delivery to the dealer or recycler. The dealer or recycler must notify DHSMV within 24 hours of receiving the derelict vehicle or mobile home and the derelict vehicle or mobile home must be secured for three business days (excluding weekends and holidays) prior to its destruction or dismantling. Under s. 319.30(7)(b), F.S., it is a third degree felony³⁷ for anyone willfully and deliberately:

- selling, transporting, delivering, purchasing, or receiving a derelict motor vehicle without obtaining
 - a certificate of title,
 - a salvage certificate of title,
 - a certificate of destruction, or
 - a derelict motor vehicle certificate;
- entering false or fictitious information on a derelict motor vehicle certificate;
- not completing the derelict motor vehicle certificate or not notifying DHSMV; or
- destroying a derelict motor vehicle without waiting the required three full days.

³⁵ By reference, s. 319.30, F.S., defines a secondary metals recycler as any person who:

“(a) Is engaged, from a fixed location or otherwise, in the business of gathering or obtaining ferrous or nonferrous metals that have served their original economic purpose or is in the business of performing the manufacturing process by which ferrous metals or nonferrous metals are converted into raw material products consisting of prepared grades and having an existing or potential economic value; or

(b) Has facilities for performing the manufacturing process by which ferrous metals or nonferrous metals are converted into raw material products consisting of prepared grades and having an existing or potential economic value, other than by the exclusive use of hand tools, by methods including, without limitation, processing, sorting, cutting, classifying, cleaning, baling, wrapping, shredding, shearing, or changing the physical form or chemical content thereof

³⁶ Section 319.30(7)(a)4., F.S.

³⁷ Supra note 13.

Subsection (6) of s. 319.30, F.S., also requires salvage motor vehicle dealers to record the name, address, and personal identification card number of any person delivering motor vehicles, derelicts and major parts. Violation of the subsection is a first-degree misdemeanor.³⁸

Both salvage motor vehicle dealers and secondary metals recyclers are required to return all certificates of title to DHSMV each month. All certificates of destruction, affidavits, and all other required information must be retained by the dealer or recycler for 3 years.

III. Effect of Proposed Changes:

Sections 1, 10, 21, 23 25, and 26, amend ss. 207.002(1)(11)(12), 316.545, 320.01, 320.03, 320.071, and 320.0715, F.S., deleting the definitions of “apportioned motor vehicle” and “apportionable vehicle” in s. 207.002, F.S. The definitions are no longer applicable to the purpose of ch. 207, F.S., nor are they consistent with the definitions referenced in s. 320, F.S.

Section 2 and 3 provide intent and amends s. 316.003, F.S., which defines terms used in the “Florida Uniform Traffic Control Law,” by defining the term “road rage” to mean:

The act of a driver or passenger to intentionally or unintentionally, due to a loss of emotional control, injure or kill another driver, passenger, or pedestrian, or to attempt or threaten to injure or kill another driver, passenger, or pedestrian.

Section 4 amends s. 316.083, F.S., provides that on roads, streets, or highways having two or more lanes that allow movement in the same direction, a driver may not continue to operate a motor vehicle in the furthestmost left-hand lane if the driver knows, or reasonably should know, that he or she is being overtaken in that lane from the rear by a motor vehicle traveling at a higher rate of speed.

The bill provides that this prohibition does not apply to a driver operating a motor vehicle in the furthestmost left-hand lane if:

- The driver is driving the legal speed limit and is not impeding the flow of traffic in the furthestmost left-hand lane;
- The driver is in the process of overtaking a slower motor vehicle in the adjacent right-hand lane for the purpose of passing the slower moving vehicle so that the driver may move to the adjacent right-hand lane;
- Conditions make the flow of traffic substantially the same in all lanes or preclude the driver from moving to the adjacent right-hand lane;
- The driver’s movement to the adjacent right-hand lane could endanger the driver or other drivers;
- The driver is directed by a law enforcement officer, road sign, or road crew to remain in the furthestmost left-hand lane;
- The driver is preparing to make a left turn; or
- The driver is traveling at a speed not less than 10 miles per hour under the posted speed limit.

³⁸ As punishable by s. 775.082 or s. 775.083, F.S., up to 1 year in jail and/or a \$1,000 fine.

A driver simultaneously violating these provisions and the provisions of s. 316.183, F.S. (relating to Unlawful Speed) shall receive a uniform noncriminal traffic citation for the unlawful speed violation.

Section 5 reincorporates s. 316.1923, F.S.

Section 6 requires the department to provide information on yielding the left lane in all of its driver license educational materials that are newly printed on or after October 1, 2013.

Section 7 amends s. 316.1937, F.S., to reduce the “fail point” of an IID, i.e., the threshold of the blood alcohol level at which the vehicle is prevented from starting. The bill lowers the BAC from 0.05 to 0.025.

Sections 8 and 9, amend ss. 316.302 and 316.025, F.S., revising provisions relating to commercial motor vehicles (CMV) to incorporate required federal law:

- The bill incorporates 49 C.F.R. § 383 into Florida law to incorporate provisions for violations of the texting and hand-held mobile telephone provisions of federal law, thereby avoiding a potential federal funds penalty for failure of the state to comply with federal law.
- The bill changes the date on which federal rules and regulations are incorporated from October 1, 2011 to December 31, 2012.
- The bill incorporates subpart F of 49 C.F.R. part 107 to authorize the DHSMV enforcement officers to conduct inspections on cargo tanks and cargo tank motor vehicles.
- The bill revises CMV regulations to conform both intra-state and inter-state related to physical qualifications for drivers.

Section 11, amends s. 316.646, F.S., to allow drivers to provide proof of required insurance by electronic means on an electronic device such as the display of a smartphone. The bill provides that the act of presenting an electronic device does not constitute consent of access to other information on the device and that the person presenting the device assumes all liability for any damage to the device. The department is granted rulemaking authority to administer the section.

Sections 12, 18, and 20, amends ss. 317.0016, 319.28 and 319.323, F.S., by removing obsolete provisions related to certificates of repossession. Because the title must be held by the lienholder when it disposes of a vehicle, there is no need for certificate of repossession.

Section 13, amends s. 318.14, F.S., to provide that the penalty for the commercial driver license holder also applies to the commercial learner’s permit holder. The department is aligning with the federal rule, 49 C.F.R. 384.226.

Section 14, amends s. 318.1451, F.S., clarifying the agency’s rulemaking authority to administer traffic law and substance abuse courses.

Section 15, creates s. 319.141, F.S., allowing the department to create a pilot rebuilt motor vehicle inspection program. By October 31, 2013 the department shall implement a pilot program in Miami-Dade and Hillsborough Counties to evaluate alternatives for rebuilt inspection services to be offered by the private sector, including the feasibility of using private facilities, the cost impact to consumers, and the potential savings to the department.

The bill requires the department to establish a memorandum of understanding that will allow private parties participating in the program to conduct rebuilt motor vehicles inspections and specifies requirements for oversight, bonding and insurance, procedures, and forms and requires the electronic transmission of documents.

The applicants shall meet basic criteria in order to be approved for the pilot program:

- Have and maintain a surety bond or irrevocable letter of credit in the amount of \$50,000 executed by the applicant;
- Have and maintain garage liability and other insurance required the department;
- Have completed criminal background checks of owners, partners, and corporate officers and the inspectors employed by the facility;
- Meet any additional criteria the department determines necessary to conduct proper inspections;
- A participant in the program shall access vehicle and title information and enter inspection results through an electronic filing system authorized by the department;

The department shall submit a report to the President of the Senate and the Speaker of the House providing the results of the pilot program by February 1, 2015.

Section 319.141, F.S., shall stand repealed on July 1, 2015, unless reenacted by the Legislature.

Section 16, amends s. 319.225, F.S., to require that when a dealer sells a vehicle to an out of state resident or out of state dealer and the power of attorney form is applicable to the transaction, the dealer must photocopy the completed original and mail to the department within 5 business days after the certificate of title and dealer reassignment form are delivered by the dealer to its purchaser.

The bill also allows for proper maintenance of electronic titles. The change will allow a new form for the buyer and seller in transferring motor vehicle electronic titles and will allow for those titles to remain electronic. If the transferee agrees to maintain the title electronically, both the transferor and the transferee must complete a secure reassignment document which discloses the odometer reading and be signed by both at the tax collector office or license plate agency.

Sections 17, 22, 53, and 54, amends ss. 319.23, 320.02, 328.01, and 324.48, F.S., to require applicants for the titling and/or registration of vehicles and vessels to provide an officially recognized form of identification including a driver license or state ID card from another state, and a valid passport. The bill provides business applicants the ability to use a local government – issued business license in lieu of a federal employer identification number.

Section 24 amends s. 320.05, F.S., removing the provision that electronic registration records shall be open to the inspection of the public during business hours. The bill clarifies the different

types of information that can be made available upon proof of identification. The bill deletes the provision allowing certain businesses and professionals obtaining information by telecommunication in certain circumstances. The bill also conforms and clarifies a list of records that may be provided by the department.

Section 19, 56, and 57, amends ss. 319.30, 713.585, 713.78, F.S., creating a pilot program in Miami-Dade and Hillsborough Counties for the inspection of rebuilt motor vehicles at privately owned locations. The bill also expands s. 319, 30, F.S., definitions regarding dismantling, destructing and identity changes of motor vehicles and mobile homes. The bill also requires motor vehicle records to be identified through a records check of the National Motor Vehicle Title Information System, and clarifies liens for recovering, towing and storing vehicles and mobile homes.

Section 19, amends s. 319.30, F.S., making a number of changes to statute addressing salvage vehicles. Significantly, all salvage motor vehicle dealers, secondary metals recyclers, auction, and independent entities dealing in junk or salvage vehicles must be registered with NMVTIS and all junk and salvage motor vehicle transactions must be reported to NMVTIS .

The threshold at which a vehicle is declared unrebuildable under current law (*i.e.*, 80 percent of the current retail price of the vehicle) is removed.

The bill adds defines a *Nonrepairable vehicle* as a vehicle that:

- Has no resale value except as a source of parts or scrap metal or that the owner irreversibly designates as a source of parts or scrap metal or for destruction; or
- Has little or no resale value other than its worth as a source of a vehicle identification number that could be used illegally; and
- Has been substantially stripped as a result of theft;
- Is missing all of the bolt-on sheet metal body panels, all of the doors and hatches, substantially all of the interior components, and substantially all of the grill and light assemblies; or
- Is a substantially burned vehicle that:
 - Has burned to the extent that there are no more usable or repairable body or interior components, tires and wheels, or drive train components; or
 - The owner irreversibly designates for destruction or as having little or no resale value other than its worth as a source of scrap metal or as a source of a vehicle identification number that could be used illegally.

The bill limits the obligation a lienholder has to salvage motor vehicle dealer or to a secondary metals recycler to the purchase price of a derelict vehicle. Towing, storage, administrative, and other fees and costs may not be charged to the lienholder of the derelict vehicle.

Under current law, damaged vehicles with repair costs greater than 100% of replacement cost must have their title branded as a “Total Loss Vehicle”. The bill removes a provision requiring the owner of a “Total Loss Vehicle” to request the title of the vehicle to be so marked.

Licensed salvage motor vehicle dealers must within 72 hours of receiving the certificate of title, forward the title to the department for processing and make the required notification to the

NMVTIS. The owner, insurance company, or self-insured entity may not dispose of a vehicle or mobile home that is a total loss before it has obtained a salvage certificate of title or certificate of destruction from the department. The department must print a certificate of destruction when a motor vehicle or mobile home has been declared nonrepairable, and can authorize dismantling or destruction of that vehicle or mobile home.

Section 27, amends s. 320.18, F.S., expanding the department's authorization to withhold the registration of a motor vehicle or mobile home which was previously not legally registered, to also include any co-owner of the vehicle or mobile. Currently, such authorization applies only to owners.

Section 28, 29, 30, 31, and 32, amends ss. 320.27, 320.62, 320.77, 320.771, and 320.8225 F.S., allowing applicants for licenses necessary for motor vehicle dealers and manufacturers, mobile home dealers and manufacturers, and recreational vehicle dealers to choose an extension of the licensure period for an additional year, for a total of 2 years. An initial applicant pays to the department \$300 for the first year, \$75 for the second year, in addition to any other fees required by law. An applicant for renewal pays to the department \$75 for a 1-year renewal or \$150 for a 2-year renewal, in addition to any other fees required by law.

The bill amends s. 320.27(4)(a), F.S., adjusting the license issuance expiration date for franchise motor vehicle dealers from annually to expiring on December 31, of the year of its expiration unless the license is revoked or suspended prior to that date. Additionally, license issued to independent or wholesale dealer or auction will expire on April 30 of the year of its expiration unless revoked or suspended prior to that date. The department shall deliver or mail to each licensee the necessary renewal forms, at least 60 days before the license expire.

The bill also amends s. 320.27(5), F.S., allowing persons obtaining a supplemental license for permanent additional place or places of business, not contiguous to the premises for which the original license is issued, on a form to be furnished by the department, and upon payment of a fee of \$50 for each such additional location. Applicants are allowed to choose to extend the licensure period for an additional year for a total of 2 years. He or she will pay to the department a fee of \$50 for the first year and \$50 for the second year for each additional location. Thereafter, the applicant shall pay \$50 for a 1-year renewal or \$100 for a 2-year renewal for each such additional location.

The bill makes conforming changes to fee provisions to remain fee-neutral.

Section 33, amends s. 322.095, F.S., to require (1) Each driver license applicant must complete a traffic law and substance abuse education (TLSAE) course, unless he or she has been licensed in another jurisdiction or has satisfactorily completed a Department of Education driver education course offered pursuant to s. 1003.48, F.S.³⁹ The department approves traffic law and substance abuse education courses, including courses that use communications technology as delivery method. Initial approval of traffic law and substance abuse education courses shall be based on the department's review of all course materials which must be designed to promote safety, education, and driver awareness; course presentation to the department by the provider; and the

³⁹ <http://www.flsenate.gov/Laws/Statutes/2012/1003.48> (Instruction in operation of motor vehicles)

provider's plan for effective oversight. Each course provider seeking approval of a traffic law and substance abuse education course must submit; proof of ownership, copyright, or written permission from course owner to use the course in the state. Also, the curriculum must promote motorcyclist, bicyclist, and pedestrian safety and provide instruction on physiological and psychological consequences of the abuse of alcohol and other drugs; the societal and economic costs of alcohol and drug abuse; the effects of alcohol and drug abuse on the driver of a motor vehicle; the laws relating to the operation of a motor vehicle; the risk factors involved in driver attitude and irresponsible driver behaviors, such as speeding, reckless driving, and running red lights and stop signs; and results of the use of electronic devices while driving.

Prior to offering the course, the provider must obtain certification from the department. If the course is offered in a classroom setting, the course provider and any schools authorized by the provider to teach the course must offer the approved course at locations that are free from distractions and reasonably accessible to most applicants. The provider also must issue a certificate to persons successfully completing the course.

In addition to regular course costs, an assessment fee of \$3 shall be collected by the school from each person. The course provider must remit the \$3 assessment to the department for deposit into the Highway Safety Operating Trust Fund in order to receive a unique course completion certificate number for the student.

The department may maintain information and records necessary to administer its duties and responsibilities for the program. Course providers are required to maintain all records pertinent to the conduct of approved courses for 5 years and allow the department to inspect such records as necessary (can be electronic). If such information is a public record, it shall be made available to the public upon request.

The department shall design, develop, implement, and conduct effectiveness studies on each delivery method of approved courses on a recurring 3-year basis. Courses will be reviewed assessing the effectiveness in reducing DUI and moving traffic citations, and collision recidivism. If a course fails the effectiveness study, the provider shall immediately cease offering the course.

Courses must be updated at the department's request. The provider has 90 days to update course, if asked by department, failure to do so will result in suspension.

Course providers are responsible for the driver improvement schools conducting courses fully to the required time limits and content requirements—using only department approved materials. It is the responsibility of the course provider to ensure that students complete courses. If incompleteness is found due to action, error, or omission on the course provider or driver improvement school conducting the course there shall be accommodations made to permit that student's completion at no additional cost.

TLSAE courses are a minimum of 4 hours, devoted to course content minus a maximum of 30 minutes allotted for breaks.

Students are not allowed to purchase a course completion certificate. Course providers must clearly convey that only valid course completion certificates—those that are entered into the department's Driver Improvement Certificate Issuance System. Paper certificates are not acceptable for any licensing purpose.

Course providers must clearly disclose all fees associated with course during the registration period.

Within 5 days of course completion, the course provider must submit persons having completed courses, at no cost to the student.

The department may deny, suspend, or revoke course approval upon proof that the course provider: (a) violate this section; (b) has been convicted of a crime involving any drug-related or DUI-related offense, a felony, fraud, or a crime directly related to the personal safety of a student; (c) failed to satisfy the effectiveness criteria as outlined in subsection (6); (d) obtained course approval by fraud or misrepresentation; (e) obtained or assisted a person in obtaining any driver license by fraud or misrepresentation; (f) conducted a traffic law and substance abuse education course in the state while approval of such course was under suspension or revocation; (g) failed to provide effective oversight of those who deliver the course in the state.

The department shall not accept certificates from students after a course has been suspended or revoked.

Persons convicted of drug-related or DUI-related crimes in the past 5 years; felony, fraud, or crimes directly related to personal safety of a student shall not be allowed to conduct traffic law and substance abuse education courses.

The department shall summarily suspend approval of any course without preliminary hearing for the purpose of protecting public safety and enforcing provisions of law governing traffic law and substance abuse education courses.

Before a course is denied, suspended, revoked, the course provider shall have the opportunity to request either a formal or informal administrative hearing to show cause as to why the action should not be taken.

The department may levy and collect a civil fine of at least \$1,000, but not more than \$5,000 for each violation of this section. Proceeds from collected fines shall be deposited into the Highway Safety Operating Trust Fund and used to cover the cost of administering or promoting highway safety initiatives.

Section 34, amends s. 322.125, F.S., providing that the composition of the Medical Advisory Board. The bill eliminates the requirements that a medical board member be a member of the Florida Medical Association, Florida Osteopathic Association or Florida Optometric Association.

Section 35, amends s. 322.135, F.S., allowing the county tax collectors, if he or she has reason to believe that a licensee is physically or mentally unqualified to operate a motor vehicle, may

choose not to issue or renew his or her driver license. The bill removes permissive language related to the tax collector's ability to refer such cases to DHSMV.

Section 36, amends s. 322.18, F.S., allowing a licensee who is eligible to renew his or her driver license, and must submit to a vision test, may be examined and test administered by a doctor of medicine or a doctor of osteopathy licensed to practice optometry in any state. The physician or optometrist must send results of that test to the department on a form obtained from the department and signed by such health care practitioner; and must meet vision standards that are equivalent to the standards for passing the departmental vision test. The physician or optometrist may submit the results of a vision test by the department-approved electronic means.

Section 37, amends s. 322.21, F.S. to modernize driver license language. This and subsequent sections change the word "driver's" to "driver" when referring to licenses.

Section 38, amends s. 322.212, F.S., to expand penalties for persons providing false information when applying for commercial driver license to include those persons applying for commercial learner's permit as well as those convicted of fraud in connection with testing for a commercial driver license or commercial learner's permit, disqualifying he or she from operating a commercial motor vehicle for a period of 1 year.

Section 39, amends s. 322.22, F.S., to give the department the ability to refuse issuance of or renew a license.

Section 40 amends s. 322.245, F.S., allowing that the court shall electronically notify the department within 10 days of a person failing to comply, and having been charged, with a specified offense under chs. 316 and 320, F.S., with the court's directives ordered by traffic court or failure to pay child support.

Section 41 amends s. 322.25, F.S., repealing subsection 7 which allows for court-ordered temporary reinstatement of a DUI offender's driving privilege. The provision has not been used since 1982.

Section 42 and 43 amend, ss. 322.2615 and 322.2616, F.S., providing that the license suspension hearings may be conducted using electronic communications technology. Also, the bill clarifies that the failure of a subpoenaed witness to appear at the formal review hearing is not grounds to invalidate the suspension. However, if the witness fails to appear, a party may seek enforcement of a subpoena by filing a petition for enforcement in the circuit court of the judicial circuit in which the person failing to comply resides or by filing a motion for enforcement in any criminal court case resulting from the driving or actual physical control of a motor vehicle that gave rise to the suspension. The bill further clarifies that a request for a formal review hearing or an informal review hearing shall not stay the suspension of the person's driver license. If the department fails to schedule the formal review hearing within 30 days after receipt of the request, the department shall invalidate the suspension. If the scheduled hearing is continued at the department's initiative or the driver enforces the subpoena as provided in s. 322.2615(3), F.S. The formal review hearing may be conducted upon a review of the reports of a law enforcement officer of a correctional officer, including documents relating to the administration of a breath test or blood test or the refusal to take either test or the refusal to take a urine test. However, as

provided in s. 322.2615(6), F.S., the driver may subpoena the officer or any person who administered or analyzed breath or blood test. If the arresting officer or the breath technician fails to appear pursuant to a subpoena as provided in subsection 6, the department shall invalidate the suspension.

Section 44, amends s. 322.64, F.S., to bring the department into compliance with federal law, 49 CFR 383.51.⁴⁰ The bill clarifies that the statute's use of the term "disqualification" is considered a "conviction" for purposes of determining the length of a suspension period under the federal code. The bill also clarifies that, in hearings held pursuant to s. 322.64, F.S., a crash report shall be considered by the Hearing Officer, notwithstanding the exemption in s. 316.066, F.S. This mirrors an existing provision in s. 322.2615(2), F.S. Similarly, in s. 322.64(7) (a)1., F.S., relating to the scope of the hearing, the bill removes the word "arresting" from "arresting law enforcement officer." This change mirrors current provisions of ss. 322.2615(7) (a)1. and 322.2616(8) (a)1., F.S.

Section 45, amends s. 322.2715, F.S., to require that if a convicted person has been granted a medical waiver and is seeking a restricted license shall not be entitled to a restricted license until the required IID installation period under s. 322.2715(3), F.S., expires, in addition to the time requirements under s. 322.271, F.S. If a medical waiver has been approved for a convicted person seeking permanent reinstatement of the driver license, the convicted person must be restricted to an employment-purposes-only (EPO) license and be supervised by a licensed DUI program until the required IID install period expires.

Section 46, amends s. 322.28, F.S., to provide that *convictions* that occur on the same date resulting from separate *offense* dates, shall be treated as separate convictions and the offense which occurred earlier will be deemed a prior conviction for the purpose of s. 322.28, F.S. The bill also removes the maximum revocation period for first DUI convictions as the courts are ordering revocation periods that exceed the maximum period. Removing this will allow the department to better enforce court orders without a conflict in statute.

This section also removes language that is no longer applicable in reference to reexaminations required upon expiration of the revocation period to obtain a new driver license and authorizing the court to issue an order of reinstatement on a form furnished by the department for reinstatement by the department pursuant to s. 322.282, F.S.

This section removes the court's ability to reinstate a license when revoked for a DUI. The redacting of this information would require all offenders to meet the departments' requirements for reinstatement of a DUI. It would close a loophole that says a person whose license has been revoked/suspended for an alcohol related offense may obtain a court order for reinstatement of their driving privilege on a temporary basis.

Section 47 repeals s. 322.331, F.S., relating to a habitual traffic offender (HTO) whose five-year revocation has expired, and has not had an HTO hearing, must request a hearing prior to driver license reinstatement. These hearings are cursory, with all such drivers granted the option to

⁴⁰ <http://www.gpo.gov/fdsys/pkg/CFR-2011-title49-vol5/pdf/CFR-2011-title49-vol5-sec383-51.pdf> (Subpart D – Driver Disqualifications and Penalties)

reinstate. The bill eliminates the requirement for a hearing. In no other circumstances do statutes require a hearing for reinstatement determination once a sanction has expired. This change would reduce the number of hearings held by the Bureau of Administrative Reviews by approximately 1,000 and free up resources for re-allocation.

Additionally, this section eliminates paragraph 2 of section 322.331, F.S., because it references requirements that must have occurred prior to July 1, 2011. Paragraph 2 was authorized for a one-time amnesty program. This section is no longer valid.

Section 48 amends s. 322.61, to remove the provisions of careless driving, fleeing or attempting to elude a law enforcement officer, driving CMV that are not properly insured. Also removing language concerning individuals who provide proof to the clerk of court or designated official where receiving a citation, by the date the individual must appear in court or pay any fine for violation, that he or she did hold valid commercial driver's license – therefore, was not guilty of offense.

The section also removes outdated CMV language regarding possession of controlled substances, and CMV licenseholder's whose driver license is suspended, revoked, or canceled or while a licenseholder is disqualified from driving a CMV.

The bill adds language concerning disqualification of CMV violations for commercial driver license.

The bill applies the same provisions to the commercial learner's permit as it does to the commercial driver license, and now mirrors the federal rule, 49 CFR 383.51.⁴¹

Section 49 amends s. 324.0221, F.S., providing that insurers issued policy providing personal injury protection coverage or property damage liability coverage shall report the cancellation or nonrenewal to the department within 10 days after the processing date of each renewal, cancellation or nonrenewal. Upon the issuance of a policy providing personal injury protection coverage or property damage liability coverage to a named insured not previously insured by the insurer during that calendar year, the insurer shall report the issuance of the new policy to the department within 10 days. The report shall be in the form and format and contain any information required by the department and must be provided in a format that is compatible with the data processing capabilities of the department. The department may adopt rules regarding the form and documentation required. Failure by an insurer to file proper reports with the department as required by this subsection or rules adopted with respect to the requirements constitutes a violation of the Florida Insurance Code. These records shall be used by the department only for enforcement and regulatory purposes, including the generation by the department of data regarding compliance by owners of motor vehicles with the requirements for financial responsibility coverage.

Section 50, amends s. 324.031, F.S., removing the bond of surety self-insurance option for persons self-insuring.

⁴¹ Id

Section 51, amends s. 324.091, F.S. removing the requirement that insurers and the department exchange certain coverage information via US mail, postage prepaid. The bill removes the US mail requirement, as the department and insurers move toward further electronic notification and data exchange.

Section 52, amends s. 324.161, F.S., to provide that a person can present proof of a certificate of deposit (CD) to be held by the financial institute that issued it. The CD must be in the amount of \$30,000, and a power of attorney issued and held by the department.

Section 55, amends s. 328.76, F.S., revising the requirement that the department retain a specified \$1.4 million of the Marine Resources Conservation Trust Fund to be deposited into the Highway Safety Operating Trust Fund for administrative costs, to authorize the department to only retain an amount equal to their administrative costs.

Section 56 amends s. 713.585, F.S., to require that a person claiming a lien on a vehicle for towing, storage, or other services must notify all persons claiming an interest in the vehicle as identified through a records check of the NMVTIS.

Section 57 amends s. 713.78, F.S., relating to persons who claim a wrecker operator's lien for recovery, towing, or storage of an abandoned vehicle or vessel upon instructions from property owner or law enforcement agency. The section is amended to also include a landlord or person authorized by a landlord, to cause the removal of vehicles or vessels that remain on the premises after tenancy terminated. Persons who claim a wrecker operator's lien for recovery, towing, or storage must check the records of NMVTIS to identify all interested parties when notifying the vehicle's owners.

Sections 58 through 74, either amend, revise, correct or repeal various sections of the bill to correct cross-references which will change as a result of the bill.

The bill takes effect July 1, 2013.

Other Potential Implications:

According to the DHSMV, significant programming is required to implement several provisions of the bill. Therefore, an effective date change of October 1, 2013, may be in order.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

Section 40 removing the requirement for habitual traffic offenders to attend a reinstatement hearing will result in a \$12 savings to such individuals. All other fees in the bill remain fee-neutral.

B. Private Sector Impact:

The bill makes a number of changes extending penalties to holders of commercial learner permits that are indeterminate but likely negative.

C. Government Sector Impact:

FISCAL IMPACT ON STATE FUNDS:

	Amount Year 1 <u>FY 2013-2014</u>	Amount Year 2 <u>FY 2014-2015</u>	Amount Year 3 <u>FY 2015-2016</u>
Non-Recurring or First Year Start Up Effects:			

This bill will require programming, which the cost will be absorbed within existing resources.

Recurring or Annualized
Continuation Effects:

Section 10:

REVENUES:

Paper Title Service Fee			
Highway Safety Operating TF	<u>(\$ 415,691)</u>	<u>(\$ 415,691)</u>	<u>(\$ 415,691)</u>
Fast Title Fees			
General Revenue Fund	(\$ 93,408)	(\$ 93,408)	(\$ 93,408)
Highway Safety Operating TF	<u>(306,740)</u>	<u>(\$ 306,740)</u>	<u>(\$ 306,740)</u>
Total Fast Title Impact – State Funds	<u>(\$ 400,148)</u>	<u>(\$ 400,148)</u>	<u>(\$ 400,148)</u>
Total Section 10:	<u>(\$ 815,839)</u>	<u>(\$ 815,839)</u>	<u>(\$ 815,839)</u>

The above impact assumes 5% of customers electing to maintain their title electronically.

Section 30:

EXPENDITURES:

Highway Safety Operating Trust Fund			
Purchase of Driver Licenses	<u>\$ 75,411</u>	<u>\$ 75,411</u>	<u>\$ 75,411</u>

Reflected above is the production cost to issue a Commercial License Permit plastic card.

	Amount	Amount	Amount
	Year 1	Year 2	Year 3
	<u>FY 2013-2014</u>	<u>FY 2014-2015</u>	<u>FY 2015-2016</u>

Section 48:

REVENUES:

Highway Safety Operating Trust Fund			
Vessel Administrative Fee	(\$ 596,272)	(\$ 596,272)	(\$ 596,272)
Florida Fish and Wildlife Commission			
Marine Resources Conservation TF			
Vessel Base Tax Revenues	<u>\$ 596,272</u>	<u>\$ 596,272</u>	<u>\$ 596,272</u>
 Total Revenues	 <u>\$ 0</u>	 <u>\$ 0</u>	 <u>\$ 0</u>

Above is the estimated additional transfer of vessel base tax revenues to the Florida Fish and Wildlife Commission. The Department will retain sufficient revenues to cover the administrative cost of the program.

Long-Run Effects Other
Than Normal Growth:

None

Total Recurring and
Non-Recurring Effects:

REVENUES:

General Revenue Fund	(\$ 93,408)	(\$ 93,408)	(\$ 93,408)
Florida Fish and Wildlife Commission			
Marine Resources Conservation TF	\$ 596,272	\$ 596,272	\$ 596,272
Department of Highway Safety			
Highway Safety Operating TF	<u>(\$ 1,318,703)</u>	<u>(\$ 1,318,703)</u>	<u>(\$ 1,318,703)</u>
Total Revenues:	<u>(\$ 815,839)</u>	<u>(\$ 815,839)</u>	<u>(\$ 815,839)</u>

EXPENDITURES:

Department of Highway Safety			
Highway Safety Operating TF	\$ <u>75,411</u>	\$ <u>75,411</u>	\$ <u>75,411</u>

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Transportation on March 14, 2013:

The bill:

- added provisions authorizing DHSMV to implement a pilot program in Miami-Dade and Hillsborough Counties to evaluate private services for the inspection of rebuilt vehicles.
- added provisions relating to road rage and the requirement for drivers to yield to overtaking vehicles, and limiting violations to drivers traveling no more than 10 mph under the speed limit.
- added provisions revising the notification and the value threshold used in salvage vehicle transactions.

B. Amendments:

None.